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March 2, 2009

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc., and  
ACS of the Northland, Inc. Petition for Conversion to Price Cap Regulation  
and For Limited Waiver Relief, WC Docket No. 08-220**

Dear Ms. Dortch:

On Thursday, February 26, 2009, representatives of ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc., and ACS of the Northland, Inc. (collectively, the "ACS LECs") met with the Wireline Competition Bureau staff members copied on this letter in connection with the above-referenced petition (the "Petition"). Present at this meeting were: Thomas R. Meade, Vice President for Carrier Markets and Economic Analysis of Alaska Communications Systems Group, Inc., the corporate parent of the ACS LECs, Karen Brinkmann and Jarrett S. Taubman of this office, and Dave Blessing of Parrish, Blessing & Associates, Inc., outside consultant to the ACS LECs. In addition, on Friday, February 27, 2009, Mr. Meade discussed the Petition in a meeting with Nick Alexander of the office of Commissioner McDowell.

In the Petition, the ACS LECs request that the Commission grant limited waivers of its rules as necessary to permit the ACS LECs to convert to price cap regulation as of July 1, 2009 and retain interstate common line support for their study areas following such conversion. During the meetings, the ACS LECs emphasized that: (i) it is appropriate for the Wireline Competition Bureau to grant the Petition pursuant to delegated authority, as the relief sought therein is consistent with relief already granted to four other midsize carriers; (ii) the Petition should be granted expeditiously in order to allow the ACS LECs to provide more innovative service offerings and respond to competition; and (iii) ACS of Anchorage, Inc. ("ACSA") should be treated the same as other price cap carriers with respect to its broadband offerings.

**A. The Bureau Can, and Should, Grant the Petition Pursuant to Delegated Authority**

During the meeting with the Bureau, the ACS LECs reiterated that the relief sought in the Petition is consistent with authority recently granted to four other midsize carriers

to convert from rate-of-return to price cap regulation in accordance with principles established in the *CALLS Order*.<sup>1</sup> The ACS LECs explained that this conclusion is unaltered by the *ACSA Forbearance Order*, which granted ACSA limited pricing flexibility.<sup>2</sup> Notwithstanding that order, ACSA remains under rate-of-return regulation for many of its interstate services, and in particular its special access services, which represent a substantial amount of revenue for ACSA, subject to intense competitive pressures. As proposed by the ACS LECs, grant of the Petition would subject ACSA to the same regulation as other price cap LECs with respect to all of its interstate services, including special access and broadband services, and ACSA would qualify for pricing flexibility or forbearance only to the extent that ACSA meets the requirements of the Commission's applicable rules and orders. Thus, ACSA is not seeking any relief beyond that already granted to other price cap carriers.

The ACS LECs noted that grant of the Petition would have the same beneficial results as the Commission's previous grants of similar petitions. Each of the ACS LECs – including ACSA – would come under the Commission's well-established, comprehensive and uniform price cap regime for all interstate regulated rates, and would have greater incentives to increase efficiency across all service offerings.<sup>3</sup> Moreover, each of the ACS LECs – including ACSA – would be subject to the obligation to *reduce* rates imposed by that regime.<sup>4</sup> Thus, the

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<sup>1</sup> See *Petition of Puerto Rico Telephone Company, Inc. for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules; Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief; Frontier Petition for Limited Waiver Relief upon Conversion of Global Valley Networks, Inc., to Price Cap Regulation*, Order, 23 FCC Rcd 7353 (WCB 2008) (“*PRTC Order*”); *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, Order, 23 FCC Rcd 5294 (2008) (“*Windstream Order*”). See also *Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 12962 (2000) (“*CALLS Order*”).

<sup>2</sup> *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 USC §160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, Memorandum Opinion and Order, 22 FCC Rcd 16304 (2007) (“*ACS Forbearance Order*”), recon. pending.

<sup>3</sup> These price caps would replace the caps on switched access rate elements imposed by the *ACSA Forbearance Order*.

<sup>4</sup> Further, following grant of the Petition, each of the ACS LECs would leave the NECA traffic-sensitive pool (with the exception of ACSA, which does not participate in the pool). Since the ACS LECs are net contributors to the pool, this should result in a substantial decrease in the ACS LECs' existing traffic-sensitive rates. The ACS LECs that are currently in the NECA common line pool would exit the pool concurrent with the freezing of interstate common line support on a per-line basis.

relief sought in the Petition is more expansive than the relief granted in the *ACSA Forbearance Order*, and would promote the interests of competition and consumers.

In the *ACSA Forbearance Order*, ACSA was granted non-dominant treatment for its interstate switched access rates, subject to a number of conditions; under this limited form of relief, ACSA currently may file changes to its tariffed rates, terms and conditions for (only) its interstate switched access services on one day's notice, similar to a non-dominant carrier. To the extent necessary to bring ACSA under the same rules as the other ACS LECs, and all price cap carriers, ACSA is willing to file its traffic-sensitive charges on 7 days' notice (for rate reductions) or 15 days' notice (for all other tariff changes), and otherwise to comply with the Commission's price cap rules as set forth in the Petition, as a condition of grant of the waivers requested in the Petition.

Because the relief sought in the Petition is consistent with Commission precedent, it is appropriate to grant the Petition at the Bureau level. Simply put, the Petition presents no novel question of law or policy, and no party can justifiably object to the lower rates, increased competition, and innovative service offerings expected to result from grant of the Petition.

**B. The Bureau Should Grant the Petition Expeditiously to Allow the ACS LECs to Provide More Competitive and Innovative Service Offerings**

Because the ACS LECs propose to file price cap tariffs effective July 1, 2009, they urgently request that the Petition be granted in the coming weeks. In response to a question from staff, the ACS LECs explained that burdensome rate-of-return regulations, including rate structure and pricing regulations still applicable to ACSA following the *ACSA Forbearance Order*, are limiting the ACS LECs' ability to respond quickly to market dynamics. Notably, under rate-of-return regulation, the ACS LECs are ineligible for pricing flexibility for their interstate special access rates, are unable to file contract tariffs on one day's notice as their competitors do, and are limited in their ability to offer innovative pricing structures or customer incentives in response to competitive offerings.

As a case in point, a large special access customer recently terminated the special access services it had been receiving from the ACS LECs throughout the state of Alaska, and is now obtaining those services from a competitor. Because that competitor is not subject to rate-of-return regulation, it was able negotiate substantial discounts and a term contract, without regard to either cost justification or pricing structure. Under rate-of-return regulation, the ACS LECs cannot offer equivalent rates or alternative pricing structures, and thus are hindered in their ability to compete effectively.

If the Petition is granted, the ACS LECs would be eligible to seek pricing flexibility, and thus able to respond to market dynamics more quickly and effectively. Further, the ACS LECs would have incentives to develop more innovative offerings for their interstate services. The Commission found when it adopted the price cap regime that these benefits to consumers could be substantial. For these reasons, the ACS LECs respectively urge that the Petition be granted before the end of March, to allow the ACS LECs to file a price cap tariff effective July 1, 2009.

**C. There Is No Justification For Special Conditions On ACSA's Broadband Offerings**

Under the *ACSA Forbearance Order*, ACSA was permitted non-dominant treatment of certain mass market broadband services (*i.e.*, dedicated Internet access service over DSL or fiber), provided it first submitted its proposed cost allocation to the Commission.<sup>5</sup> However, there is no reason to extend this condition in a price cap environment. First, ACSA never took advantage of this pricing relief.<sup>6</sup> Second, the Commission never ruled that ACSA's existing cost allocation was improper; rather, this condition of the *ACSA Forbearance Order* simply carried over to ACSA the condition adopted for all rate-of-return carriers in the *Wireline Broadband Internet Access Services Order*.<sup>7</sup> Third, when the Commission subsequently granted waiver petitions to permit four other carriers to convert to price caps, no such condition was imposed.<sup>8</sup> The same treatment should be afforded ACSA as all other price cap carriers. Cost allocation should have no relevance to the pricing of their broadband or narrowband service offerings.

For rate-of-return carriers, for which an earnings determination is used for ratemaking purposes, the Commission required a review of the proposed cost allocation prior to granting full relief from common carrier regulation for broadband Internet access service. For price cap carriers, no such condition was imposed, and broadband Internet access service was permitted to be provided on a non-common carrier basis without further Commission action.<sup>9</sup> As the Commission recognized in the *Wireline Broadband Internet Access Services Order*, price cap regulation leaves carriers "with little incentive to shift costs" from their enhanced services operations to tariffed telecommunications services because carriers are not able to increase regulated rates to recapture those costs.<sup>10</sup>

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<sup>5</sup> *ACSA Forbearance Order* at ¶ 80 (requiring ACSA to submit a cost allocation before exercising broadband forbearance relief "given the *continued rate of return regulation* of [ACSA's] special access services . . .") (emphasis supplied).

<sup>6</sup> This condition was premised on ACSA's status as a rate-of-return carrier, and required ACSA to submit a cost allocation only if it sought to exercise forbearance relief while still a rate-of-return carrier. *Id.*

<sup>7</sup> *See Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order, 20 FCC Rcd 14853 (2005) ("*Wireline Broadband Internet Access Services Order*").

<sup>8</sup> *See* n.1, *supra*.

<sup>9</sup> *Wireline Broadband Internet Access Services Order* at ¶ 130 ("In this Order, we allow the non-common carrier provision of wireline broadband Internet access transmission that we previously have treated as regulated, interstate special access service . . .").

<sup>10</sup> *Id.* at ¶ 82.

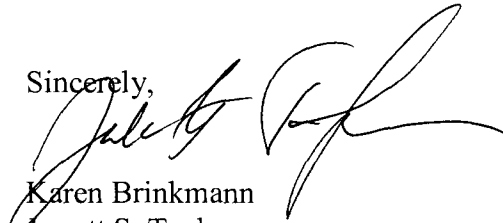
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Accordingly, there is no justification for requiring ACSA – or any other ACS LEC – to submit a cost allocation as a condition of converting to price cap status. ACSA should be afforded the same treatment as all other price cap carriers.

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For the foregoing reasons, the ACS LECs request that the Bureau expeditiously grant the Petition to allow them to convert to price cap regulation as of July 1, 2009. Please contact the undersigned should you have any questions.

Sincerely,



Karen Brinkmann  
Jarrett S. Taubman

*Counsel for the ACS LECs*

cc: Al Lewis, Chief, Pricing Policy Division, Wireline Competition Bureau (“WCB”)  
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